

Companies Act 2006 and companies in charity structures – September 2009 update

Most of the changes under the Companies Act 2006 have already been brought into force; however the remaining provisions are due to take effect from 1 October 2009. A summary of key changes is set out below. This information sheet supplements a summary of the key changes affecting charities and their subsidiaries that we published for Charities in September 2008.

To view that summary visit: www.bllaw.co.uk or alternatively contact Elizabeth Davis at elizabeth.davis@bllaw.co.uk or T: 023 9228 2725.

Free assessment

Our earlier information sheet contained a FREE ASSESSMENT OFFER to assess whether changes are needed to a charity's memorandum and articles or to that of its subsidiary companies. OUR OFFER IS STILL OPEN. We would also like to help Charities that have taken us up on our offer and have yet to proceed with recommended changes or a governance review and would be delighted to discuss FIXED COST options with you. If you are interested please contact Elizabeth Davis on Elizabeth.Davis@bllaw.co.uk or telephone 023 92 282725.

This client information sheet summarises the new key rules under the Companies Act 2006 coming into force and affecting all charities on 1 October 2009. A number of the new rules apply irrespective of provisions in your current articles of association. We have focused on charitable companies in this note but the new rules (with some differences) will affect all companies including trading and other companies owned by or associated with charities.

Summary of Provisions in force from 1 October 2009

New Rules	Action Point
<p>Form changes</p> <p>The 2006 Act requires about 200 new forms. Companies House forms will be amended, if only to remove the number of the form which currently refers to the relevant section in the Companies Act 1985. The new forms will contain a reference to the section of the 2006 Act (but not in the heading as currently).</p>	<ul style="list-style-type: none"> ▪ Look out for the new specimen forms when they are released on the Companies House website. ▪ After 1 October 2009 companies must use the new forms.
<p>Constitution</p> <p>New forms of Memorandum and Articles of Association will be introduced for companies forming on and after 1 October 2009.</p> <p>The new Memorandum will be a short statement stating that the subscribers wish to form a company and to become members (and to take at least 1 share each in the case of companies limited by shares) This information is known as "Section 8 Information".</p> <p>All other information presently contained in the memorandum, including the company's powers will be in the articles of association, and for existing companies (formed prior to 1 October 2009) this information will be deemed as in the articles.</p> <p>For companies limited by shares, there will no longer be a limit of shares that a director can issue. However, the issue of shares can be controlled by provisions in the articles.</p> <p>Previously, objects were limited to those set out in the company's memorandum. From 1 October 2009, objects of all companies will be unrestricted unless the articles expressly prohibit certain transactions (charities, will be required under charity law to restrict their objects).</p> <p>Companies House must be notified of amendments to the articles within 15 days. Failure to do so will be a criminal offence. There is also a new civil penalty of £200 for failure to comply in response to a notice from the Registrar.</p> <p>A company with pre 1 October 2009 memorandum and articles must either file the memorandum as an annex to the articles with any amendment to the constitution made after 1 October 2009 or the articles must be rewritten incorporating the non Section 8 Information into the articles.</p>	<ul style="list-style-type: none"> ▪ Existing companies will not be required to change their existing memorandum and articles of association but may wish to do so as and when changes to their articles are made. ▪ All companies with old version memorandum and articles will have to file both documents whenever a change is made to either document after 1 October 2009; ▪ Information other than Section 8 Information currently contained in the memorandum will be treated as being part of the articles. ▪ Amendments affecting the objects as charity property require the prior written consent of the Charity Commission under the Charities Act 2006. ▪ The new model articles contained in the 2006 Act Regulations for companies limited by guarantee are not suitable for charitable companies as they provide for directors to be remunerated. The Charity Commission is expected to publish model articles for Charities on 1 October 2009. ▪ Changes to the issues of shares do not apply to charitable companies limited by guarantee which do not have a shareholding.
<p>Entrenchment provisions</p> <p>Under the Companies Act 1985 a company could provide that certain rights in the memorandum could never be altered, known as 'absolute entrenchment' provisions. This is no longer possible under the new Act for companies formed after 1</p>	<ul style="list-style-type: none"> ▪ Existing companies should check whether there are any absolute entrenchment provisions currently in their

<p>October 2009. However, existing companies with provisions that are incapable of change will continue to have them and they will only be removable by way of court order.</p> <p>Companies will still be able to use 'conditional entrenchment' provisions, which can only be altered or removed when certain conditions have been met (eg with the approval of a greater majority of members than the usual 75% special resolution requirement). Companies must either incorporate such provisions in the articles on formation, or they will require the unanimous consent of members to include / amend their articles at a later date.</p> <p>Any changes to entrenchment provisions must be notified to Companies House within 15 days of the change.</p>	<p>memorandum or articles that are capable of change, as they will need amending.</p>
<p><u>Change of company name</u></p> <p>A company can normally change its name by:</p> <ul style="list-style-type: none"> ▪ special resolution; or ▪ by any means provided in its articles <p>Companies must notify the Registrar with the appropriate form (depending on the method used) and required fee.</p> <p>The change of name is only effective when the Registrar has processed all required documentation and issued new certificate.</p>	<ul style="list-style-type: none"> ▪ If the name is changed by special resolution, the company must give notice to the Registrar. ▪ If the name is changed by a provision in articles, the company must give notice to the Registrar and a statement that the change of name has been made in accordance with the company's articles. ▪ Charitable companies that change their name must notify the Charity Commission as well as the Companies registrar. ▪ Names cannot be reserved so send all the documents together in order to finalise the change of name.
<p>Incorporation</p> <p>Companies incorporated after 1 October 2009 will need to file the following with Companies House:</p> <ul style="list-style-type: none"> ▪ application form IN01 ▪ memorandum of association (new version) ▪ articles of association (new version) ▪ correct fee 	<ul style="list-style-type: none"> ▪ No action required in this area by existing companies. ▪ Companies incorporated after 1 October 2009 must comply.
<p><u>Treatment of company name</u></p> <p>Companies will still be prohibited from using a name that:</p> <ul style="list-style-type: none"> ▪ is offensive or where its use would involve an offence ▪ suggests a connection with any part of Government ▪ includes sensitive words and expressions (which will be listed in new Regulations from 1 October 2009) ▪ is the same as a name that has already been registered, 	<ul style="list-style-type: none"> ▪ Companies incorporating after 1 October 2009 should make sure that the chosen name for incorporation is permissible to avoid the application being rejected by Companies House. ▪ Existing companies wishing to

<p>however, the rules on "same as" is much stricter in new 2009 Regulations so the Registrar will disregard a number of matters if they appear at the end of the name and are followed by a full stop, including "GB", "services" and "com"</p> <p>There will also be a prohibition on names that suggest a connection to public authorities to be specified in new 2009 Regulations. These controls are in addition to the requirement that generally a company's name must end in "public limited company" or "plc" or "limited" or "ltd" (or the Welsh equivalents).</p>	<p>register a name that is the same as another registered name is permissible if the company belongs or is to belong to the same group as the company with registered name (provided company with registered name gives written consent).</p>
<p><u>Directors' service addresses</u></p> <p>From 1 October 2009 every director must provide Companies House with both their usual residential address and for each directorship they hold, a service address.</p> <p>Only the service address will be made public. The residential address will be protected and only available to prescribed authorities such as the police and HMRC. (Credit reference agencies may also have access to the residential address).</p> <p>The use of Confidentiality Orders will cease on 1 October 2009 and therefore applications received after this date will be rejected.</p> <p>The service address can be any address (including the company's registered office) provided documents can be delivered there and an acknowledgement of receipt can be provided if necessary. The address cannot be a PO Box or DX address.</p> <p>If the service address is ineffective, the Registrar will be able to ban the use of this address for up to 5 years and use the usual residential address as the service address.</p>	<ul style="list-style-type: none"> ▪ The current address for directors' of existing companies will automatically become their service address from 1 October 2009. Therefore if directors wish to have a different service address they must provide one, which can be given online at the Companies House website. ▪ There is no fee required to file a service address. ▪ Vulnerable directors will be able to apply to the Registrar for their address not to be provided to the credit reference agencies.
<p><u>Single Alternative Inspection Location (SAIL)</u></p> <p>New arrangements for inspecting a company's registers will be introduced. A company will no longer have to keep all its registers at the registered address office; it may set up a SAIL address and move all or some of the registers to that address.</p>	<ul style="list-style-type: none"> ▪ A company must notify Companies House of a SAIL address, and if it changes, and when documents are moved there.
<p><u>Statement of capital</u></p> <p>This is a statement giving a "snapshot" of a limited company's issued share capital at a given time. Charities incorporating companies limited by shares on or after 1 October 2009 must complete this statement as part of the application to incorporate.</p> <p>These companies will also have to complete a statement of</p>	<ul style="list-style-type: none"> ▪ Companies limited by shares, incorporated after 1 October 2009 should ensure that they complete a statement of capital as part of the application process.

<p>capital when filing annual returns made up to or after 1 October 2009, and as part of application forms relating to capital change.</p>	<ul style="list-style-type: none"> ▪ Existing companies limited by shares should ensure that all application forms relating to the change of the company's capital or shareholding include an up-to-date statement of capital.
<p><u>Northern Ireland</u></p> <p>As from 1 October 2009, a single company law regime will apply to the whole of the UK, so companies will be UK companies rather than GB or Northern Ireland companies. The Companies Registry Northern Ireland will merge with Companies House. There will still be a registry function in Belfast with a registrar to deal with companies in Northern Ireland.</p>	<ul style="list-style-type: none"> ▪ Existing companies in Northern Ireland will automatically become UK companies but will keep "NI" prefix in their registration number. Companies with registered office in Northern Ireland formed after 1 October 2009 will also keep prefix NI in their registration number. ▪ There will no longer be a Companies Registry NI website, and the existing forms will no longer be valid. All information will be held on the Companies House website, and the new UK forms will apply to all UK companies. ▪ Companies in Northern Ireland will still have to have a registered office in Northern Ireland after 1 October 2009, however if they want to open a branch in England, Wales or Scotland, they will no longer have to register separately with the specific jurisdiction.

Contact

For further information or advice, please contact:

Elizabeth Davis

E: elizabeth.davis@bllaw.co.uk

T: 023 8085 7011

Adrian Pashley

E: adrian.pashley@bllaw.co.uk

T: 023 8085 7004

This publication is not a substitute for detailed advice on specific transactions and problems and should not be taken as providing legal advice on any of the topics discussed.

Blake Laphorn uses the information it holds about you to contact you where necessary if (for instance) you have registered to attend a seminar that we are hosting or have requested information regarding the services that we provide. We will also use it to administer, support, improve and develop our business and to contact you for your views on our services, as well as to let you know about other products and services which we offer which may be of interest to you. We may send them by post, telephone or fax, email or SMS. If you would rather NOT receive further information by any particular format, or at all, or if your details need updating, please contact Kay Hogg on 01865 258010 or by email at kay.hogg@bllaw.co.uk

We will not disclose any of your personal identifiable information to any third parties without your express permission to do so, unless we believe that we should do so to comply with the law.